NOTES OF CASES.

Proximate Cause—Hurling Animal against Pedestrian.—Where an electrically propelled street car is negligently run against a horse and buggy being driven across the street car track at a street intersection, and the horse is hurled against a person in the street, injuring him, the negligence of the servants of the street car company operating the car is held in the Georgia case of Columbus R. Co. *v.* Newsome, L. R. A. 1915B, 1111, to be the proximate cause of the injury.

Jurors Drink the Evidence.—Defendant in State *v.* Applegate, 149 Northwestern Reporter 356, was convicted of keeping and maintaining a common nuisance under the liquor laws of the state of North Dakota. How the jury could convict him under the circumstances is hard to explain. Perhaps their sense of justice was not overcome by the effects of the refreshments obtained at defendant's expense, or it may be that the quantity of the beverage used was insufficient to bring forth that verdict which would naturally be presumed to be rendered, or it may be that they didn't like his brand of beer. Nevertheless, he was convicted. During the trial there was offered in evidence three bottles which it is claimed contained beer, and upon the retiring of the jury these three bottles with their contents were taken with them to the jury room. The court did not caution them not to open the bottles or to experiment with them. When the bailiff was noticed by the jurymen that they had arrived at their verdict and when he opened the door of the jury room to obtain the same he found the three bottles empty. The Supreme Court of North Dakota said "that if the jury drank the contents of the bottles in order to test its qualities as an intoxicant they clearly violated the law, as they had no right to try any such experiment. Even if they drank it from a spirit of bravado, prejudice will be presumed." For these reasons the judgment of the district court was reversed, and the case was remanded for further proceedings. We wonder how the character of the contents of the bottles is to be proven on second trial without violation of the secrets of the jury room.

Carriers—Infant in Arms—Carrying Past Destination.—In Southern Railway Company *v.* Herron, decided recently by the Court of Appeals of Alabama (68 South. 551), it was held that a child nine months old, accompanying her mother, who is a passenger, is a passenger, though riding free, and the carrier owes her the same duty as if fare had been paid. The court said notice would be taken of the custom of railroads to carry free children under one year when accompanied by an adult passenger paying fare. Although ordinarily

a carrier need not give a passenger personal notice that his station has been reached, yet exceptional circumstances may impose such duty, in view of the age, sex, or physical infirmity of the passenger.

In the case before the court it appeared that a mother, carrying a child about nine months old, became a passenger and notified the agent collecting the fare that she desired to get off at a certain station and that she had never been there. It was held to be the duty of the carrier to give the mother notice that the train had stopped or was about to stop at her distination, either by calling the station distinctly or by personal notice, and to stop the train and afford the mother a safe place and reasonable time to alight; and where it failed so to do, and carried the child and the mother beyond their destination, and in returning to the destination the child became ill as a proximate consequence thereof, the child could recover.

Real Estate Brokers—Compensation.—In Futrell *v.* Reeves in the Court of Appeals of Kentucky (June, 1915, 176 S. W. 1151), it was held that where a broker's contract for the sale of real estate provides for a net amount to the owner, his compensation is such sum as the purchaser is ready and willing to pay in excess of such net price.

It was also decided that where a broker brings the purchaser and owner together, the fact that they conclude a transaction different in terms from the one which the broker was authorized to negotiate does not deprive him of his right to commissions.

It was held, following "the great weight of authority * * * that a stipulation in a real estate broker's contract promising him a compensation in the event of a sale of the property by the owner himself during the life of the contract is valid and enforcible, where the broker has used ordinary diligence in endeavoring to make a sale of the property (Schoenmann *v.* Whitt, 136 Wis. 332, 117 N. W. 851, 19 L. R. A., N. S., 598, with monographic note). Dobinson *v.* McDonald, 92 Cal. 33, 27 Pac. 1098; Shainwald *v.* Cady, 92 Cal. 83, 28 Pac. 101; Crane *v.* McCormick, 92 Cal. 176, 28 Pac. 222; Metcalf *v.* Kent, 104 Iowa 487, 73 N. W. 1037; Schlange *v.* Lennox, 101 Ill. App. 88; Chapin *v.* Bridges, 116 Mass. 105; Lapham *v.* Flint, 86 Minn. 376, 90 N. W. 780; Hoskins *v.* Fogg, 60 N. H. 402."

Contingent Fee—Settlement of Case—Liability of Client.—As the employment of a lawyer to serve for a contingent fee does not make it the client's duty to continue the lawsuit, a lawyer cannot recover the profits that would have come to him if his client, who settled the cause, had pressed it to a successful conclusion; but when the client abandons the action he becomes liable for the value of the services then rendered, and that is the measure of the liability of the client. Andrews *v.* Haas, 214 N. Y. 255.